Supreme Court, U.S.
FILED
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MICHAEL RODAK, JR., CLERK

80-970

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

NO.

GEORGL FIRESTONE, as Secretary of State of Florida, DOROTHY GLISSEN, as Director of Division of Elections, State of Florida, JIM SMITH, as Attorney General of Florida; and ROBERT HART, Chairman of Florida Elections Commission, ANNE KELLY, ROBERT HUCKSHORN, SAMUEL SHORESTIN, and FLORENCE NEIDIG, Members of Florida Elections Commission.

Petitioners

vs.

LET'S HELP FLORIDA, a Political Committee and PAUL M. BRUUN,

Respondents

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

JURISDICTIONAL STATEMENT

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A

QUESTION PRESENTED BY APPEAL

WHETHER THE DECISION OF THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT, HOLDING UNCONSTITUTIONAL A FLORIDA STATUTE, SHOULD BE GIVEN PLENARY CONSIDERATION BY THIS COURT IN LIGHT OF THE FACT THAT THE DECISION (A) CONFLICTS WITH THE OPINION OF THE SUPREME COURT OF CALIFORNIA IN CITIZENS AGAINST RENT CONTROL V. CITY OF BERKELEY, 167 CAL. RPTR. 84 (1980), IN THAT THE TWO CASES REACH OPPOSITE CONCLUSIONS ON THE QUESTION OF WHETHER IT IS CONSTITUTIONALLY VALID UNDER THE FIRST AMENDMENT TO RESTRICT THE AMOUNT OF POLITICAL CONTRIBUTIONS TO POLITICAL COMMITTEES IN THE CONTEXT OF REFERENDUM ELECTIONS, AND; (B) DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT, IN THAT THE QUESTION SET FORTH ABOVE, PRESENTED BY THIS CASE, IS AN ISSUE WHICH HAS BEEN LEFT OPEN BY THIS COURT, WHICH IS OF SIGNIFICANT IMPORTANCE AND WHICH HAS WIDESPREAD RAMIFICATIONS?

B

PARTIES TO PROCEEDING

ALL PARTIES TO THIS PROCEEDING ARE CONTAINED IN THE CAPTION OF THE CASE.

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OPINIONS BELOW

The order of the United States District Court for the Northern District of Florida granting injunctive relief is reported as Let's Help Florida v. Smathers, 453 F.Supp. 1003 (N.D. Fla. 1978). (A 22). The opinion of the United States Court of Appeals, Fifth Circuit, is reported as Let's Help Florida v. McCrary, 621 F.2d 195 (5th Cir. 1980). The opinion deals with both this case and a consolidated case, Dade Voters For A Free Choice v. Firestone.

F

GROUNDS ON WHICH JURISDICTION IS INVOKED

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(2) to review the judgment and opinion of the United States Court of Appeals, Fifth Circuit, entered July 11, 1980, holding invalid as repugnant to the Constitution a Florida State Statute. (A 1-21). A timely petition for rehearing was denied on September 10, 1980. (A94-95).

G

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The First Amendment to the United States Constitution

> CONGRESS SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF RELIGION, OR PROHIBITING THE FREE EXERCISE THEREOF; OR ABRIDGING THE FREEDOM OF SPEECH, OR OF THE PRESS; OR THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES.

2. Florida Statutes § 106.08(1)

> 106.08 CONTRIBUTIONS: LIMITATIONS ON.-
> (1) NO PERSON OR POLITICAL COMMITTEE SHALL MAKE CONTRIBUTIONS TO ANY CANDIDATE OR POLITICAL COMMITTEE IN THIS STATE, FOR ANY ELECTION, IN EXCESS OF THE FOLLOWING AMOUNTS:
> (a) TO A CANDIDATE FOR COUNTYWIDE OFFICE OR TO A CANDIDATE IN ANY ELECTION CONDUCTED ON LESS THAN A

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COUNTYWIDE BASIS, $1,000.

(b) TO A CANDIDATE FOR LEGISLATIVE OR MULTICOUNTY OFFICE, $1,000.

(c) TO A CANDIDATE FOR STATEWIDE OFFICE, $3,000.

(d) TO ANY POLITICAL COMMITTEE IN SUPPORT OF, OR IN OPPOSITION TO, AN ISSUE TO BE VOTED ON IN A STATEWIDE ELECTION, $3,000.

(e) TO ANY POLITICAL COMMITTEE IN SUPPORT OF, OR IN OPPOSITION TO, AN ISSUE TO BE VOTED ON IN A COUNTYWIDE, DISTRICTWIDE, OR LESS THAN COUNTYWIDE ELECTION, $1,000.

(f) TO A POLITICAL COMMITTEE SUPPORTING OR OPPOSING ONE OR MORE CANDIDATES, $1,000.

(g) TO A CANDIDATE FOR COUNTY COURT JUDGE OR CIRCUIT JUDGE, $1,000.

(h) TO A CANDIDATE FOR RETENTION AS A JUDGE OF A DISTRICT COURT OF APPEAL, $2,000.

(i) TO A CANDIDATE FOR RETENTION AS A JUSTICE OF THE SUPREME COURT, $3,000.

H

STATEMENT OF THE CASE

Plaintiffs instituted a proceeding in the United States District Court for the Northern District of Florida seeking an injunction against the enforcement of a Florida statute restricting the amount of money a person, natural or corporate, or political committee may contribute to a political committee in support of or in opposition to an issue being voted upon in a referendum election. It was at this stage of the proceedings and in this manner that the questions regarding the statute's constitutionality which are presented for review here were first raised.

The district court granted relief and Defendants appealed. The case was

consolidated with an appeal in the case of Dade Voters For A Free Choice v. Fire-Stone. The United States Court of Appeals, Fifth Circuit, affirmed, holding that the statute was unconstitutional as an impermissible abridgment of First Amendment rights.

The present proceeding follows. Defendants are also seeking review of the decisions presented here in an appeal taken in the consolidated case of Dade Voters For A Free Choice v. Firestone. Certiorari is being utilized in that case because of the existence of a second issue not presented, which could not be raised if that case had proceeded by appeal. 28 U.S.C. § 1254(2).

I

REASONS WHY QUESTION PRESENTED IS SO SUBSTANTIAL AS TO REQUIRE PLENARY CONSIDERATION.

The decision of the United States Court of Appeals, Fifth Circuit, is in clear and direct conflict with the decision of the Supreme Court of California in Citizens Against Rent Control v. City of Berkeley, 167 Cal. Rptr. 84 (Cal. 1980). In addition, the appellate court here has decided an important question of federal law which has not been, but should be, settled by this Court.

In the present case, the Fifth Circuit found unconstitutional Florida Statutes § § 106.08(1)(d) and 106.08(1)(e) which impose limitations on the amount of money that any person, natural or corporate, or political committee may contribute

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to a political committee in support of or in opposition to an issue being voted upon in a referendum election. The court held that the statutory provisions in question "abridge important first amendment rights and are ill-suited for preventing corruption or for promoting disclosure." 621 F.2d at 201. (A 21).

In Citizens Against Rent Control the California Supreme Court dealt with a city ordinance which imposed the same manner of limitations on contributions as did the Florida Statutes dealt with in the present case. The court found the ordinance to be valid, stating:

> We hold above the large contributions to a local ballot measure campaign threaten our electoral system and potentially

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> pervert the purpose of initiative procedures; in light of this conclusion, restricting the size of such contributions "focuses precisely on the problem." (Buckley [v. Valeo], 424 U.S. [1] at p. 28, 96 S.Ct. at p. 639 [1976].) We reject, as the Buckley court did, the argument that mere disclosure of contributions is sufficient for this purpose. (Id. at pp. 27-28, 96 S.Ct. at pp. 638-39.) As with the measure at issue in Buckley, the contribution limitation in section 602 does not interfere with other ways of engaging in political activity, but restricts the one means that represents a danger rather than an aid to the electoral process.
>
> 167 Cal. Rptr at 91.

There can really be little dispute that the two opinions conflict. Indeed, the dissent in Citizens Against Rent

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Control specifically noted that the opinion in the present case conflicted with the court's holding in Citizens Against Rent Control. 167 Cal. Rptr. at 94-95. Moreover, one of the cases relied upon in the decision presently under review was the lower appellate court opinion, Citizens Against Rent Control v. City of Berkeley, 99 Cal. App.3d 736, 160 Cal. Rptr. 448 (Ct. App.1st Dist. 1979), reversed by the California Supreme Court in Citizens Against Rent Control. 621 F.2d at 200. (A 17 [1]).

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[1] Review has been sought in this Court of the decision in Citizens Against Rent Control. The appellants therein have asserted conflict with the opinion in the present case. Citizens Against Rent Control v. City of Berkeley, case no. 80-737, Appellants' Jurisdictional Statement, pp. 20-21.

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Given the conflict, Petitioner submits that this Court should give full consideration to the issue presented here. Clearly, it is one that will be presented by statutes and ordinances throughout the nation. Allowing this conflict to remain unresolved will only perpetuate confusion in this area of the law.

Further, the import of the issue is readily apparent, as is the fact that it is an issue which should logically be considered at this time, as a natural matter to be decided subsequent to this Court's decisions in Buckley v. Valeo, 424 U.S. 1 (1976) and First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978).

In Buckley, this Court struck down

limitations on expenditures, but sanctioned limitations on contributions, in the context of candidate elections. Then, in Bellotti, this Court declared unconstitutional a Massachusetts statute which prohibited corporations from making expenditures for the purpose of influencing the vote on questions submitted to the voters. This Court, however, left open the question of the constitutionality of laws prohibiting or limiting contributions to political committees, the very question presented here. 435 U.S. at 787, n.26. It thus appears that the issue presented here is a logical outgrowth of Buckley and Bellotti which needs to be dealt with by this Court.

Based, therefore, upon the fact that

a logical progression of issues calls for review, the fact that clear conflict exists and the import and widespread ramifications of the issue, Defendants submit that this Court should give this case plenary consideration.

J

CONCLUSION

Based upon the foregoing argument, Defendant's respectfully request that this Court accept this cause for plenary consideration.

Respectfully submitted,

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K

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Jurisdictional Statement was furnished by mail to TOBIAS SIMON, P. A., Jennifer Hurst, Esquire, 1492 South Miami Avenue, Miami Florida 33130 on this _____ day of December, 1980.

Respectfully submitted,

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Petitioners

vs.

LET'S HELP FLORIDA, a Political Committee and PAUL M. BRUUN,

Respondents

APPENDIX

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LET'S HELP FLORIDA, a Political Committee, and Paul M. Bruun, Plaintiffs-Appellees,
v.
Jesse M. McCRARY, Jr., as Secretary of State of Florida, et al., Defendants-Appellants.

DADE VOTERS FOR A FREE CHOICE, a Political Committee, and the Florida Restaurant Association, Inc., Plaintiffs-Appellees,
v.
George FIRESTONE, Secretary of State of Florida, et al., Defendants-Appellants.

Nos. 78-2497, 79-2091

United States Court of Appeals, Fifth Circuit.

July 11, 1980.

Appeals from the United States District Court for the Northern District of Florida.

Before THORNBERRY, FRANK M. JOHNSON, Jr. and HENDERSON, Circuit Judges.

THORNBERRY, Circuit Judge:

In these consolidated cases we must decide whether Florida statutes that restrict the size of contributions to a single political committee in a referendum election violate the first amendment

rights of persons who want to contribute more than the maximum amount allowed by the statutes. Because campaign contributions implicate important first amendment rights and because Florida has shown no sufficiently important interest to justify restricting the contributions in a referendum election, we affirm the district court decisions declaring these statutory restrictions unconstitutional.

I. Facts.

Let's Help Florida is a political committee organized and registered under Florida law for the express purpose of conducting "a public education campaign urging the passage of a constitutional amendment which will legalize casino gambling in Southern Florida." The committee waged a petition drive under the initiative provisions of the Florida

constitution in an effort to place the casino gambling proposal on the ballot in the November 1978 election. The committee does not support any individual candidate.

The Florida legislature enacted a comprehensive election code effective January 1, 1978. Section 106.08(1)(d) of the code restricts the size of contributions to a single political committee like Let's Help Florida:

> (1) No person or political committee shall make contributions to any candidate or political committee in this state, for any election, in excess of the following amounts:
>
> . . . . .
>
> (d) To any political committee in support of, or in opposition to, an issue to be voted on in a statewide election, $3,000.

The election code does not restrict the number of contributions a person can make to different political committees,

nor does the code restrict the total amount of independent direct expenditures that a person can make without control by, coordination with, or consultation with any candidate, committee, or agent thereof. Fla.Stat.Ann. § 106.011(5) (West Supp. 1980). Political committees must disclose a variety of information upon registration. Fla.Stat.Ann. § 106.03 (West Supp. 1980). Committees must also disclose information about all contributors, even those who make very small contributions. Fla.Stat.Ann. § 106.07 (West Supp. 1980). Various civil and criminal penalties apply for violations of the election code.

In February 1978 Let's Help Florida and a person desiring to contribute more than the statutory maximum amount filed suit against the secretary

of state, attorney general, director of the division of elections, and the members of the state elections commission to invalidate section 106.08(1)(d) under the first and fourteenth amendments. In May 1978 the district court issued a decision invalidating the statute on constitutional grounds.

Dade Voters for a Free Choice is a political committee organized and registered under Florida law to oppose passage of an ordinance that would prohibit smoking in public places; the voters considered this proposal in a countywide referendum election in May 1979. The committee does not support any individual candidate. Contributions to the Dade Voters committee were restricted to one thousand dollars by Fla.Stat.Ann. § 106.-08(1)(e) (West Supp. 1980), which applies

to countywide elections in the same way that section 106.08(1)(d) applies to statewide elections.

In February 1979 Dade Voters and a party desiring to contribute more than the statutory maximum amount sued the secretary of state, director of the division of elections, and members of the elections commission to invalidate section 106.08(1)(e) under the first and fourteenth amendments. In March 1979 the district court relied upon its earlier decision in the Let's Help Florida case to strike down the statute.

II. Federal Jurisdiction and Review.

Appellants in the Dade Voters case raise several contentions questioning federal jurisdiction and review. Appellants first contend that the district court lacked jurisdiction because no

case or controversy existed between the parties. The Supreme Court summarized the test to determine whether a case or controversy exists with regard to first amendment rights in Babbitt v. United Farm Workers National Union, 442 U.S. 289, 99 S.Ct. 2301, 2309, 60 L.Ed.2d 895 (1979):

> When the plaintiff has alleged an intention to engage in a course of conduct, arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." Doe v. Bolton, 410 U.S. 179, 188, 93 S.Ct. 739, 745, 35 L. Ed.2d 201 (1973).

In Babbitt the Supreme Court allowed a union to challenge the constitutionality of a state statute regulating election procedures, consumer publicity, and

criminal sanctions, even though no elections or prosecutions had yet occurred. The Court said that

> . . . when fear of criminal prosecution under an allegedly unconstitutional statute is not imaginary or wholly speculative a plaintiff need not "first expose himself to actual arrest or prosecution to be entitled to challenge [the] statute." Steffel v. Thompson, 415 U.S. 452 at 459, 94 S.Ct. 1209 at 1216, 39 L.Ed.2d 505. . . . Moreover, the State has not disavowed any intention of invoking the criminal penalty provision against unions that commit unfair labor practices. Appellees are thus not without some reason in fearing prosecution . . .

99 S.Ct. at 2310-11. The Dade Voters committee wanted to receive larger contributions than the statute allowed. The committee had already received a few contributions larger than the statutory maximum, and other potential donors, including the co-plaintiff in this case, indicated that they would make larger contributions if the law allowed them

to do so. The defendants have the statutory duty to enforce the election code. Fla.Stat.Ann. § 106.22-106.27 (West Supp. 1980). They have not disavowed any intention to enforce the statute. On the contrary, counsel for the defendants said that the state would be compelled to begin proceedings against the plaintiffs if the statute is upheld. Record, Vol. III, at 41-42. These facts show that the plaintiffs' fear of prosecution is not imaginary or wholly speculative, and that a sufficient case or controversy exists to establish federal jurisdiction under Babbitt, and under Fifth Circuit cases such as International Society for Krishna Consciousness v. Eaves, 601 F.2d 809, 817-19 (5th Cir. 1979) and Septum, Inc. v. Keller, 614 F.2d 456, 459 (5th Cir. 1980). This conclusion is not contrary to the Second Circuit opinion in

St. Martin's Press, Inc. v. Carey, 605 F.2d 41 (2d Cir. 1979). In St. Martin's Press the court held that no case or controversy existed when a publisher brought a first amendment challenge to enjoin state prosecutors from enforcing a child pornography statute against a book that was outside the scope of the statute, and against which the prosecutors declared they would not enforce the statute. 605 F.2d at 44-45. In contrast to St. Martin's Press, plaintiffs in this case desire to engage in conduct that is in clear violation of a statute which the state has indicated it will enforce against them.

Appellants also contend that the district court should have abstained from hearing this case under principles announced in Younger v. Harris, 401 U.S.

37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971). Younger abstention principles are inapplicable to this case, however, because no state prosecution was pending when the plaintiffs filed suit. Steffel v. Thompson, 415 U.S. 452, 475, 94 S.Ct. 1209, 1223, 39 L.Ed.2d 505 (1974).

Appellants finally contend that the district court should not have issued injunctive relief. A federal court may enjoin state officials from enforcing an unconstitutional statute. Ex parte Young, 209 U.S. 123, 165-68, 28 S.Ct. 441, 456-457, 52 L.Ed. 714 (1908). An injunction is proper in this case because no legal remedy could correct the irreparable injury to plaintiffs' first amendment rights, important for an election only weeks away. See Elrod v. Burns, 427 U.S. 347, 373-74 & n. 29, 96 S.Ct.

2673, 2689-2690, 49 L.Ed.2d 547 (1976) (loss of first amendment rights unquestionably constitutes irreparable injury).

III. First Amendment.

The right to make political contributions is protected under the first amendment as an important freedom of association. Buckley v. Valeo, 424 U.S. 1, 25, 96 S.Ct. 612, 637, 46 L.Ed.2d 659 (1976). In Buckley the Supreme Court struck down federal restrictions upon direct political expenditures in candidacy elections, but upheld similar restrictions upon contributions to a candidate or to a committee supporting a candidate. As a general preface to its decision, the Court explained that contributions required less first amendment protection than did direct expenditures:

> A limitation on the amount of money a person may give to a

> candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues.
>
> . . . .
>
> The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression.

424 U.S. at 21-22, 96 S.Ct. at 636.

Even though contributions receive less first amendment protection than do direct expenditures, a state may restrict political contributions only if the state

"demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms." 424 U.S. at 25, 96 S.Ct. at 638. The sole governmental interest that the Supreme Court recognized as a justification for restricting contributions was the prevention of quid pro quo corruption between a contributor and a candidate. 424 U.S. at 26-29, 96 S.Ct. at 638-640. The governmental interest in restricting contributions to candidates is substantial because actual corruption resulting from a candidate's dependence upon large individual contributors would undermine the integrity of representative democracy, and even the appearance of corruption that arises from public awareness of the possibilities for abuse would erode confidence in the democratic system. Id.

The state's interest in preventing the actual or apparent corruption of candidates, which the Supreme Court found so compelling in Buckley, does not justify restrictions upon political contibutions in referendum elections. When people elect a candidate, they choose someone to whom they can delegate their political decisionmaking. The people's need to prevent large contributors from improperly influencing this representative decisionmaker is critical. In contrast, when people vote on a referendum proposal, they directly decide the pertinent political issue for themselves. Large contributions for publicity by one group or another do not influence the political decisionmakers--in this case, the voters themselves--except in a manner protected by the first amendment. The distinction

between the state's interest in regulating a candidacy election and in regulating a referendum election was discussed by the Supreme Court in First National Bank of Boston v. Bellotti, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1976). In striking down a Massachusetts statute that prohibited a corporation from making expenditures or contributions for publicity in a referendum election unrelated to the corporation's immediate business, the Court observed that

> Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections. . . simply is not present in a popular vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it: "The Constitution protects expression which is eloquent no less than that which is unconvincing.'. . . We noted only recently that 'the concept that government

> may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment. . ."

435 U.S. at 790, 98 S.Ct. at 1423 (footnotes and citations omitted). This distinction between candidacy and referendum elections has been recognized by several other courts in striking down state restrictions upon contributions for referendum elections. See C & C Plywood Corporation v. Hanson, 583 F.2d 421, 424-25 (9th Cir. 1978) (invalidating Montana law that prohibited corporations from making contributions in a referendum election); Citizens Against Rent Control v. City of Berkeley, 99 Cal.App. 3d 736, 160 Cal.Rptr. 448, 451-55 (Ct. App., 1st Dist. 1979) (invalidating city ordinance that restricted the size of contributions in a referendum election);

Schwartz v. Romnes, 495 F.2d 844, 852-53 (2d Cir. 1974) (New York statute prohibiting corporate expenditures for political purposes must be construed narrowly under first amendment so that corporations may make contributions in referendum elections). With regard to referendum elections, appellants cannot justify the statutory restrictions upon political contributions as a means for preventing corruption.

Appellants also contend that the restrictions upon the size of contributions to a single committee are necessary to promote adequate disclosure about who is financing a campaign. In the absence of these restrictions, appellants contend that corporations and wealthy individuals would mask their participation in a referendum campaign by funneling large sums of money into a

a committee which the public would see only under an innocuous title such as "Let's Help Florida" or "Dade Voters for a Free Choice." Although promoting disclosure of campaign contributors is an important state interest, the restrictions upon political contributions in sections 106.08(1)(d), (e) cannot be justified as disclosure measures because the statutes are not closely drawn to avoid unnecessary abridgement of associational freedoms. These statutes that restrict the amount a person may contribute to a single committee do little to promote disclosure. The primary effect of the statutes is to compel large contributors who support or oppose a referendum issue to form multiple partisan committees, each of which can receive the maximum amount from a single contributor under the statute.

These multiple committees provide no additional disclosure; the public still sees only the innocuous names of the different committees, and not the identities of the underlying contributors.

Florida can and does effectively promote the disclosure of large contributors through measures that are less harmful to first amendment rights. For example, sections 106.03 and 106.07 of the Florida Election Code require political committees to register with the state and to file information about each contribution and contributor throughout the campaign. This information is available to the public and may be published through newspapers and other media. Section 106.143 requires disclosure of the source of payment for all political advertisements and campaign literature. Measures such as these provide adequate

disclosure without directly restricting contributions or other important first amendment rights. See C & C Plywood, 583 F.2d at 425 (rejecting argument that state interest in promoting disclosure justifies prohibition of corporate contributions in a referendum election).

Because the Florida statutes that restrict the size of contributions in a referendum election abridge important first amendment rights and are ill-suited for preventing corruption or for promoting disclosure, we affirm the decision in the court below.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

LET'S HELP FLORIDA, a
Political Committee
and PAUL M. BRUUN,

Plaintiffs,

vs. TCA 78-0750

BRUCE SMATHERS, as
Secretary of the State
of Florida, et al.,

Defendants.

MEMORANDUM OPINION

On February 27, 1978, plaintiffs filed this action for declaratory and injunctive relief seeking to permanently enjoin enforcement of Fla. Stat. §106.08(1) (d) (1977), which provides:

> (1) No person or political committee shall make contributions to any candidate or political committee in this state, for any election, in excess of the following amounts:
>
> * * * * *

> (d) To any political committee in support of, or in opposition to, an issue to be voted on in a statewide election, $3,000.

Jurisdiction is predicated upon 28 USC §§1331 and 1343(3).

On March 8, a hearing was held on plaintiffs' application for preliminary injunction and on March 29, an order was entered prohibiting defendants from enforcing section 106.08(1) (d), pendente lite. Because of the need for an expeditious resolution of the weighty constitutional issue presented, and with the consent of the parties, final hearing was held on April 21.

The Parties

Plaintiff Let's Help Florida is a political committee organized and registered pursuant to Florida law for the express purpose of conducting "a

public education campaign urging the passage of a constitutional amendment which will legalize casino gambling in Southern Florida . . . ." (Plaintiffs' ex. 1). The campaign entails securing amendment of Art. 10 §7 of the Florida Constitution which provides:

> Lotteries- Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state.

Let's Help Florida intends to utilize the initiative mechanism provided in Art. XI §3 of the Florida Constitution[1] to place their proposal before the electorate in the November, 1978 election. The committee is currently engaged in the petition drive necessary to secure for their issue a position on the ballot. The estimated cost of the

entire campaign is in excess of one million dollars. (plaintiffs' ex. 3). Plaintiff Paul M. Bruun is an individual who, according to the allegations of the complaint, is desirous of contributing money to Let's Help Florida in an amount which exceeds the limitation of section 106.08 (1) (d).

Defendants are the Secretary of State of Florida, the Director of the Division of Elections, the Attorney General, and the individual members of the Florida Elections Commission.[2] These officials are charged with the responsibility of enforcing the provisions of the act in issue here. See Fla. Stat. §§106.22-27.

Standing

Initially, defendants challenge the standing of plaintiffs to bring

this action. As noted previously, the complaint indicates that Paul M. Bruun wishes to make a contribution in excess of the statutory limit. Ordinarily, this allegation would be sufficient to confer upon Mr. Bruun the requisite standing to sue. However, this case has now proceeded to final hearing and Mr. Bruun did not appear.[3] The record is therefore bereft of any support for those allegations by deposition, affidavit, or otherwise.[4] Accordingly, that portion of the complaint relating to Mr. Bruun must be taken as having not been established by competent evidence and the issue presented in this litigation must be determined in light of the rights of Let's Help Florida alone.

The question of standing to sue

generally involves a two-pronged inquiry. As a constitutional matter, standing relates to whether the action presents a case or controversy within the meaning of Art. III. This requirement is satisfied where it is shown that the challenged activity has caused plaintiff "injury in fact" sufficient to demonstrate a personal stake in the outcome of the litigation "as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Baker v. Carr, 369 U.S. 186, 204 (1962). The second prong of the standing inquiry relates to whether plaintiff is the proper proponent of the rights which form the basis of the suit. Tileston v. Ullman,

318 U.S. 44 (1943). This is a rule of self restraint imposed by the courts rather than the constitution. Barrows v. Jackson, 346 U.S. 249 (1953); See also Singleton v. Wulff, 428 U.S. 106 (1976).

There can be little doubt that Let's Help Florida satisfies the first prong of the standing issue in this case. The contribution limitation involved herein directly affects the committee's ability to gather funds in support of its efforts. Samuel Vitali, Campaign Coordinator for Let's Help Florida, testified that the committee initially attempted to raise the required sums of money through contributions of $3,000 or less and was unsuccessful. In his opinion, if the ceiling is not lifted the campaign to

amend the constitution could not proceed. This testimony is unrefuted. Thus, the injury to this plaintiff is patent and a personal stake in the outcome of this litigation has been demonstrated. See Buckley v. Valeo, 424 U.S. 1 (1976).

The second prong of the standing issue presents a somewhat more difficult situation under the facts of this case. Because the allegations relating to Bruun have not been established, Let's Help Florida must either rely on the rights of its "members" or its own rights. While it has long been established that an organization may properly assert the rights of its membership, the courts have closely examined certain factual matters in applying this exception. First, the organization and

its adherents should be closely identified with each other, with the organization comprising "the medium through which individual members seek to make more effective the expression of their own views." NAACP v. Alabama, 357 U.S. 449, 459 (1958). Second, it should be shown that the organization itself would be adversely affected by the action complained of. Id. at 459-60. Finally, there must generally exist a genuine obstacle to the assertion by the members of their own rights. Id. at 459.

Let's Help Florida does not have a formal membership. There is no mechanism through which an individual sharing its concerns may have a voice in its operation. However, one who makes a contribution may loosely be considered as a "member". (Testimony

of Samuel Vitali). Because the committee currently espouses only one view, it may properly be said that the committee and its "members" are for all practical purposes identical, thereby satisfying the first sub-part of the NAACP v. Alabama, supra, test. Likewise, there is no doubt that section 106.08(1) (d) directly impacts upon the committee in curtailing its ability to effectively campaign for its position.

Less clear is the impediment to the "members" asserting their own rights. Indeed, Bruun came forward as an adherent of the committee in this very suit. In those situations where third parties, including organizations, have been permitted to assert the rights of others the impediment to the persons

on whose behalf the organization acts asserting their own rights has been closely scrutinized.[5] In this action Let's Help Florida has not addressed this question directly, choosing instead to rely on Buckley v. Valeo, supra. The court is not persuaded that Buckley represents a departure from the well settled principles of standing. In Buckley the plaintiffs challenging the federal election act included individuals and groups. Rather than delineate what rights were properly assertable by whom, the Court merely noted:

> In our view, the complaint in this case demonstrates that at least some of the appellants have a sufficient "personal stake" in a determination of the constitutional validity of

> each of the challenged provisions to present "a real and substantial controversy admitting of specific relief through a decree of conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." (footnote omitted).

Buckley v. Valeo, 424 U.S. 1, 12 (1976), quoting Aetna Life Ins. Co. v. Hayworth, 300 U.S. 227, 241 (1937).

This court is of the opinion that regardless of whether Let's Help Florida should be permitted to assert the rights of its "members", the merits of this controversy may be reached based upon the rights of the committee. The case undeniably involves First Amendment Freedoms, primarily those of political association. The Supreme Court has previously allowed a

corporation to assert rights of association on its own behalf for the reason that "though a corporation, it is directly engaged in those activities, claimed to be constitutionally protected, which the statute would curtail." NAACP v. Button, 371 U.S. 415, 428 (1963). More recently, in First National Bank of Boston v. Bellotti, ___ U.S. ___, 46 U.S.L.W. 4371 (1978), the Supreme Court again dealt with the extension of First Amendment freedoms to artificial entities.

Bellotti involved a constitutional challenge to a Massachusetts law prohibiting certain corporations from expending money or making contributions for the purpose of influencing the vote on questions to be submitted to the voters. The Court did not take the

opportunity to define the parameters of First Amendment protections afforded corporations, framing the question presented as:

> not whether corporations "have" First Amendment rights and, if so, whether they are coextensive with those of natural persons. Instead, the question must be whether §8 abridges expression that the First Amendment was meant to protect.

Id. at 4374. Finding that the statute did indeed infringe on expression of the First Amendment was designed to protect, and noting the absence of a compelling state interest in the regulation, the statute was struck down by a divided court.

It must, of course, be recognized that the Bellotti decision is distinguishable from the case at bar.

The Massachusetts law at issue in that case directly prohibited political expression. This is clearly not the situation here, for section 106.08(1)(d) does not prohibit or limit the content of political speech and limits only indirectly the quantity of such speech. It should also be noted that appellants in Bellotti were corporations which were organized for purposes other than engaging in political campaigns. In this respect the forceful arguments of the dissenting opinion of Mr. Justice White have less application to Let's Help Florida. Unlike the corporations in Bellotti, plaintiff here is not a profit making organization and there are no shareholders in need of protection. Persons and entities contributing money to Let's Help Florida

do so for the express purpose of advancing a political cause and the committee may therefore be viewed as "merely a means of achieving effective self-expression." Bellotti, supra, at 4382 (White, J. dissenting). Thus, under the reasoning of the majority in Bellotti, and based upon NAACP v. Button,[6] supra, Let's Help Florida is entitled to the protections afforded by the First Amendment and has the requisite standing to bring this action.

The Campaign Finance Act

Before turning to the merits of plaintiff's claim, it is necessary to briefly examine Florida's campaign finance act, Fla. Stat. §106 et seq., as it applies to plaintiff. Under the ace a "political committee" is defined as follows:

> "Political committee" means a combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose any candidate, issue, or political party and which accepts contributions or makes expenditures during a calendar year in an aggregate amount in excess of $100.

Fla. Stat. §106.011(1). Each political committee is required to file a statement of organization which must include, inter alia, the following information:

> (f) The name, address office sought, and party affiliation of:
> 1. Each candidate whom the committee is supporting;
> 2. Any other individual, if any, whom the committee is supporting for nomination for election, or election, to any public office whatever;

> (g) Any issue or issues such organization is supporting or opposing;
> (h) If the committee is supporting the entire ticket of any party, a statement to that effect and the name of the party; . . .

Fla. Stat. §§106.03(2) (f) (1), (2), (g), and (h). The activities of the committee are not limited by the statement of organization but any changes must be reported within 10 days of the change. Fla. Stat. §106.03(3).

In addition to the above information, political committees are required to file periodic reports detailing the source and amount of contributions and expenditures made during the period. Fla. Stat §106.07. The reporting is required regardless of the amount of contribution, except that when a contribution is less than $100.00 less

information about the donor is required. Fla. Stat. §106.07(4) (a). With the exception of the reporting requirements, the act imposes no limitations on independent expenditures, which are defined as:

> an expenditure by a person for the purpose of advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee.

Fla. Stat. §106.011(5).

Plaintiff's Claim and The Legal Standard

Let's Help Florida contends that the $3,000 contribution limitation contained in section 106.08(1) (d), as it relates to a committee supporting an issue in a statewide election, violates

the First and Fourteenth Amendments to the Constitution of the United States. More precisely, the rights involved in this case are freedom of association and, to a somewhat lesser degree, freedom of speech.

It is undeniable that First Amendment freedoms are fundamental to a free society and it is for this reason that the First Amendment occupies a preferred position among the guarantees of the Constitution. See Marsh v. Alabama, 326 U.S. 501 (1946).

The legal principles applicable to a case of this nature are particularly well settled. Thus, governmental activity having the effect of curtailing First Amendment freedoms is subject to strict judicial scrutiny. NAACP v. Alabama, 357 U.S. 449 (1958). Of

course, these rights, and particularly that of association, are not absolute, but intrusions are permitted only when the state deomonstrates a sufficiently compelling interest in regulation and the means employed to premote the interest are closely drawn to avoid unnecessary interference with protected freedoms, Buckley v. Valeo, 424 U.S. 1 (1976), because "First Amendment freedoms need breathing space to survive . . . ." NAACP v. Button, 371 U.S. 415, 433 (1963).

The constitutional issue presented by plaintiff in this action is apparently one of first impression. The court has found no case directly dealing with this type claim and none have been cited by the parties. While the Supreme Court's decision in Buckley v.

Valeo, supra, is instructive, the opinion does not squarely address the issue presented here. Buckley involved a constitutional challenge, primarily on First Amendment grounds, to various provisions of the Federal Election Campaign Act of 1971, as amended, 88 Stat. 1263. Of particular interest is the discussion as it relates to campaign contributions and expenditure limitations. The Federal Campaign Act sought to limit the amount a person or group could contribute to a candidate for elective office as well as placing ceilings on expenditures. The Supreme Court found that although the campaign contribution ceiling infringed on important associational rights, such a restriction was justified by the presence of a compelling governmental

interest. Thus, the Court stated:

> It is unnecessary to look beyond the Act's primary purpose - to limit the actuality and appearance of corruption resulting from large individual financial contributions - in order to find a constitutionally sufficient justification for the $1,000 contribution limitation. Under a system of private financing of elections, a candidate lacking immense personal or family wealth must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign. The increasing importance of the communications media and sophisticated mass-mailing and polling operations to effective campaigning make the raising of large sums of money an ever more essential ingredient of an effective candidacy. To the extent that large contributions are given to secure political quid pro quo's from current and potential office holders, the integrity of our system of representative democracy is undermined.

Buckley, supra, at 26-27.

On the other hand, the Court found that the ceilings imposed on independent expenditures involved more of a direct restraint on the quantity of political speech and could not be justified by the interest served by the contribution limitations. After noting that the constitutionality of the expenditure limitations depend upon whether the interests "advanced in its support satisfy the exacting scrutiny applicable to limitations on core First Amendment rights, "Buckly, supra, at 44-45, the Court stated:

> We find that governmental interest in preventing corruption and the appearance of corruption is inadequate to justify §608(e) (1)'s ceiling on independent expenditures. [A]ssuming, arguendo, that large

> independent expenditures pose the same dangers of actual or apparent quid pro quo arrangements as do large "contributions." §608 (e) (1) does not provide an answer that sufficiently relates to the elimination of those dangers.

id. at 45. These principles must guide this court's decision.

Preliminary Arguments

Before turning to a discussion of the statute involved herein and the interests it is claimed to support, several arguments advanced by defendants must be addressed. First, defendants continue to insist that limitations on "contributions" are per se constitutional. As stated in the memorandum in support of the petition for rehearing at page 7:

> This Honorable Court's Order of March 28, [sic]

> 1978 interprets Buckley vs. Valeo, 424 U.S. 1 (1976) to stand for the proposition not that "contributions [to]" may be constitutionally limited and that "expenditures [by]" may not be, but rather that "contributions" may be limited only upon a showing of a regulable state interest of "sufficient magnitude."
>
> The Defendants do not so read Buckley. . . .

This court finds this argument to be totally without merit. The Buckley opinion states that the "weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify the limited effect upon First Amendment freedoms caused by the. . . contribution ceiling." Buckley, supra at 29. Indeed, in a case decided subsequent to Buckley, the majority opinion states:

> One of the principles underlying the Court's decision in Buckley v. Valeo, 424 US 1, 46 L Ed 2d 659, 96 S Ct 612, was that contributing to an organization for the purpose of spreading a political message is protected by the First Amendment. Because "[m]aking a contribution. . . enables like-minded persons to pool their resources in furtherance of common political goals," id., at 22, 46 L Ed 2d 659, 96 S Ct 612, the Court reasoned that limitations upon the freedom to contribute "implicate fundamental First Amendment interests," id., at 23, 46 L Ed 2d 659, 96 S Ct 613.

Abood v. Detroit Board of Education, 52 L Ed 2d 261, 283-4 (1977). Moreover, the dissenting opinion of Justice Powell in Abood contains the following passage:

In Buckley v. Valeo, 424 US 1, 46 L Ed 2d 659, 96 S Ct 612 (1976), we considered the constitutional validity of the Federal Election Campaign Act of 1971, as amended in 1974, which in one of its provisions limited the amounts that individuals could contribute to federal election campaigsn. We held that these limitations on political contributions "impinge on protected associational freedoms";

"Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals. The Act's contribution ceilings thus limit one important means of associating with a candidate or committee. . . ." Id., at 22, 46 L Ed 2d 659, 96 S Ct 612.

Id. at 297-8. In light of this language, it cannot be gainsaid that the contribution limitations in section 106.08(1) (d) impinge on First Amendment freedoms. It is axiomatic that curtailment of First Amendment freedoms, including those of association, must be supported by a compelling state interest.

The next argument advanced by defendants is that the contribution limitations imposed by Florida law do not curtail the quantity of free speech. Closely related to this proposition is their argument that the act is constitutional because it does nothing to prohibit or diminish the "symbolic" act of associating with the candidate or organization of one's choice.

Dealing with the first of these assertions, the court has previously noted that the Supreme Court indicated contribution limitations did not appear to affect the quantity of speech to any significant degree. Thus, in the order granting preliminary injunction, this court stated:

> In Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court noted that:
>
> [A] limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication.
>
> A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. . . .
>
> Given the important role of contributions in financing political campaigna, contribution restrictions could have a severe impact on political dialogue if the

> limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy. There is no indication, however, that the contribution limitations imposed by the Act would have any dramatic effect on the funding of campaigns and political associations. The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons. . .
>
> Id. at 20-22 (footnotes omitted). While it may be true that the quantity of communication would not increase with the size of a contribution to a political candidate in an election in which numerous issues are normally addressed, it is not altogether clear that the same result would follow in an election which involves only a single issue which is to be accepted or rejected by the voters.

Let's Help Florida v. Smathers, TCA 78-0750, p. 8, fn 2 (March 29, 1978).

There has been nothing presented to

date which would indicate that in the context of a referendum a contribution ceiling would not have a limiting effect on the quantity of speech, albeit perhaps not the speech of the contributor.[7] Indeed, the unrefuted testimony of Samuel Vitali indicates that the contribution ceiling will prevent plaintiff from spreading its message if left untouched. Moreover, the court is of the view that the rights of association and speech are so inextricably interwoven as to be virtually inseparable.

As correctly pointed out by defendants, freedom of association is not explicitly addressed in the First Amendment. It is a peripheral right which is necessary to effectuate fully the free speech guarantees and as such it is no less entitled to protection, for

"[w]ithout those peripheral rights the specific rights would be less secure." Griswold v. Connecticut, 381 U.S. 479, 483 (1956). This freedom of association is not a hollow promise which assures only that one is free to perform the "symbolic" act of aligning oneself with a cause and no more. Rather, this freedom encompasses the right to gather in groups to effectively advocate one's point of view. In modern society the transmission of ideas through the various communications media has become an extremely expensive proposition. A full page advertisement in a major newspaper would most probably be prohibitively expensive for most individuals and television advertising would be out of the question. Were the court to accept defendants' rather

ingenious argument the resultant effect on freedom to associate could well be catastrophic for it would leave a state free to regulate any pooling of resources so long as it did not restrict the right to combine. Accordingly, the fact that section 106.08(1) (d) of Florida's campaign finance act does not affect the "symbolic" act of associating with a political committee is of little consequence because it undeniably renders that association less effective.

Finally, defendants claim that the constitutionality of section 106.08 has been decided by the Florida Supreme Court in Richman v. Shevin, 354 So.2d 1200 (Fla. 1978). The facts and opinion of the court belie this position. In Richman the appellant was

challenging the inclusion of the Dade County Judicial Trust Fund within the definition of a "political committee" as used in Fla. Stat. §§106.011 (2) and 106.08. The contribution limitations contained in section 106.08 were not in issue. As the court noted:

> Appellant expressly declares that he does not challenge the constitutionality of the contribution limitation but, rather, only questions the imposition of such limitation on the Judicial Trust Fund.

Richman v. Shevin, supra at 1204. It is therefore clear that any argument that Richman upholds the constitutionality of section 106.08, as that section applies to Let's Help Florida, is totally without merit.

Compelling State Interest

Beginning with the proposition

that the state generally has an overriding interest in preserving the integrity of the election process, defendants present several justifications for this legislation. First, it is claimed that the public's right and the state's interest in full disclosure of contributions to and expenditures by political committees is sufficiently compelling to sustain the ceiling. It appears unquestionable that the primary purpose behind this so-called "who gave it, who got it" law is to assure that the source of contributions and expenditures in the political arena can be identified. Clearly the voting public is entitled to this information and has a need for such disclosure in order to effectively evaluate the credibility of those advocating

positions on issues of importance. However, this interest cannot be used as a catch-all to sustain regulation with which it has no logical nexus. The identity of the contributor does not change with the size of the contribution, nor is information regarding contributors less available as the size of the contribution increases. It is, therefore, clear that a contribution ceiling has no relation to disclosure, while at the same time limiting important associational freedoms which are worthy of protection. Buckley v. Valeo, supra at 15. If the State of Florida is of the view that the disclosure provisions presently in effect are inadequate to assure that the desired information is readily available perhaps the wisest course would be to

amend the law, for it is certain that a limitation on contributions to a political committee does not effectuate the goal of disclosure.

Defendants next contend that the contribution ceiling is necessary to assure that contributions which are received by a committee which has expressed a position on a particular issue are used in a manner which is consistent with that purpose. This argument appears to be an attempt by defendants to justify section 106.08(1)(d) by pointing out the weaknesses in the act as a whole. As noted above, chapter 106 contains a requirement that all political committees file a statement of organization detailing the issues and candidates it supports or opposes. Fla. Stat. §106.03(f), (g),

and (h). Committees so registering are not "locked in" to this initial statement, but changes must be reported within 10 days of the change. Fla. Stat. §106.03(3). Therefore, it is conceivable, although highly unlikely, that a committee which originally indicates that it supports an issue could receive contributions and thereafter amend its statement of organization to reflect its opposition to that same issue. However, whatever interest the state may legitimately have in prevention of this abuse is not sufficient to justify the campaign limitation as it applies to plaintiff. Defendants have presented no evidence that such a switch in position has occurred in the past. The unrefuted testimony before this court is that Let's Help Florida is organized

for one purpose and that purpose will not change during its campaign. (Testimony of Samuel Vitali). Further, even if it were established with reasonable certainty that such an abuse would occur, the statute at issue here does nothing to remedy or prevent it. Section 106.08 (1)(d) limits contributions to political committees in support of or in opposition to an issue to be voted on in a statewide election. It does not require that funds so contributed be segregated and spent in a manner which is consistent with the statement of organization on file at the time the contribution is made, nor does it provide a mechanism for refunding monies contributed prior to a change in position. To argue that this section is aimed at the prevention of this evil is tantamount to saying that so long as contributions do not exceed $3,000 the state

has no interest in their disposition, but once they exceed that figure, it becomes a matter of grave concern to assure that they are used in accordance with the purpose for which they have been contributed. Clearly this cannot be the reason for the contributing ceiling.

Defendants further argue that the state's interest in prevention of corruption and the appearance thereof provides a sufficient basis for sustaining this legislation. Certainly it is too late in the day to suggest that prevention of corruption and its appearance would not provide justification for limiting contributions to candidates for elective office. Buckley v. Valeo, supra. Plaintiff, however, does not make this contention. Throughout this litigation plaintiff has taken the position that in

the context of an issue election the potential for such corruption is not evident.[8] The Supreme Court has recognized that the interests which serve to justify limitations on candidate contributions may not be sufficient to justify other types of restrictions in the political process. Buckley v. Valeo, supra at 45. Moreover, that Court recently has squarely rejected this interest in the context of a statute prohibiting corporate spending relative to issue elections. The Court stated:

> Nor are appellee's arguments inherently persuasive or supported by the precedents of this Court. Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections, e.g., United States v. United Auto Workers, supra; United States v. CIO, supra, simply is not present in a popular vote on a public issue. (footnote omitted).

First National Bank of Boston v. Bellotti, ___U.S.___, 46 U.S.L.W. 4371, 4378 (1978). Other courts have made this same distinction. See, for example, Schwartz v. Romnes, 495 F.2d 844 (2d Cir. 1973). It is therefore clear that in the context of an issue campaign and election, if there is to be one, the threat of corruption is minimal at best and is not sufficiently compelling to sustain this ceiling on contributions as it applies to plaintiff.

Finally, defendants argue that if section 106.08(1)(d) is declared unconstitutional a political committee need only express an interest in an issue and it is then free to avoid all campaign contribution limitations. They claim that under the statutory scheme political committees are given extraordinary privileges to amass large sums

of money and, without contribution limitations, are subject to none of the countervailing restrictions placed on individuals. The argument is circuitous. In Florida a person with ample resources may spend without restriction to promote his views on a given issue. That same person, however, may not give more than $3,000 to an organized committee embracing the same views. Further, two persons wishing to band together to pool their resources are required to register as a political committee and could spend only $6,000 to support or oppose the same issue. Far from being a privilege, this restriction of the right of small groups to effectively voice their collective opinion represents a serious limitation on associational freedoms. Such a group could not legally circumvent the contribution limitations to a candidate which have

been authoritatively sustained. Buckley, supra.

Through Art. XI §3 the Florida Constitution reserves to the people an important method of securing amendments to the organic law of the state. This mechanism is available to all members of the electorate, those who espouse popular as well as unpopular ideas; and the availability of this sacred right cannot be made to depend upon the transitory popularity of a given issue. It cannot be disputed that large sums of money would be required to secure the petition signatures necessary to place such a proposed amendment before the electorate. It therefore becomes virtually impossible for persons with limited resources to utilize Art. XI §3 under the present restrictions imposed by section 106.08(1)(d). The State of Florida by legislative

act cannot legitimately relegate this initiative provision guaranteed by the Florida Constitution to a mere illusory right without demonstrating the existence of a compelling interest. Such an interest has not been shown in this case.

ORDER

In accordance with the foregoing opinion it is hereby ORDERED AND ADJUDGED that Fla. Stat. §106.08(1)(d)(1977) as it applies to plaintiff Let's Help Florida only under the facts of this action is violative of the First and Fourteenth Amendments to the Constitution of the United States.

The clerk of this Court is directed to enter judgment in favor of plaintiff and against defendants declaring Fla. Stat. 106.08(1)(d) (1977) to be unconstitutional and permanently enjoining defendants from enforcing against plaintiff

the limitations contained therein in the context of an issue election as defined in Fla. Stat. §106. et seq., with costs to plaintiff.

DONE AND ORDERED this 17th day of May, 1978.

WILLIAM STAFFORD
UNITED STATES DISTRICT
COURT

FOOTNOTES (Let's Help Florida)

1. That section provides:

> Initiative. - The power to propose the revision or amendment of any portion of this constitution by initiative is reserved to the people, provided that, any such revision or amendment shall embrace but one subject and matter directly connected therewith. It may be invoked by filing with the secretary of state a petition containing a copy of the proposed revision or amendment, signed by a number of electors in each of one half of the congressional districts of the state, and of the state as a whole, equal to eight percent of the votes cast in each of such districts respectively and in the state as a whole in the last preceding election in which presidential electors were chosen.

2. Throughout this litigation the defendants have been represented by different counsel. Recognizing that in the memoranda on file and at oral argument the defendants do not necessarily rely on the same arguments and authorities in support of section 106.08(1)(d), for ease of reference they will be treated collectively in this opinion.

3. The failure of Mr. Bruun to appear was apparently due to illness. Counsel for plaintiffs did not request a continuance or an opportunity

to submit an affidavit or a deposition.

4. It should be noted that while the complaint is signed by Mr. Bruun it is not notarized or subscribed to pursuant to 28 U.S.C. Section 1746.

5. See for example Singleton v. Wulff, 428 U.S. 106, 117-18 (1977); Warth v. Seldin, 422 U.S. 490, 510 (1975) Eisenstadt v. Baird, 405 U.S. 438, 446 (1972); NAACP v. Alabama, 357 U.S. 449, 459 (1958).

6. In his dissenting opinion in Bellotti, supra at 4387 fn. 5, Mr. Justice Rehnquist correctly points out that the rule established in Button was an alternative holding. This fact does not, however, impair the precedential value of the decision. As the Supreme Court long ago noted,"[i]t does not make a reason given for a conclusion in a case obiter dictum that it is only one of two reasons for the same conclusion." Richmond Co. v.United States, 275 U.S. 331,340 (1928). See also Massachusetts v. United States, 333 U.S. 611,623 (1948); United States v. Title Ins. Co, 265 U.S. 472,485 (1924).

7. Under the circumstances of this case the distinction of whether the speech is that of plaintiff or that of a contributor may lose its significance. Let's Help Florida is organized for the

purpose of supporting a single issue. Unlike a candidate for office with many issues to discuss, plaintiff can concentrate its efforts on one theme and in this regard a contribution may be more directly transformed into speech. The committee could therefore be viewed as a conduit for the speech of the contributor directed to a single goal.

8. At the present time the issue supported by plaintiff is not scheduled to appear on the November election ballot. This fact does not, however, change the focus of the inquiry for under chapter 106 the activities of plaintiff in gathering signatures on a petition would appear to be regulated. Fla. Stat. §§106.011(6)(7).

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

LET'S HELP FLORIDA, a
Political Committee and
PAUL M. BRUUN,

Plaintiffs,

vs. TCA 78-0750

BRUCE SMATHERS, as
Secretary of the State
of Florida, et al., ORDER

Defendants.

In this action for declaratory and injunctive relief plaintiffs challenge the constitutionality of certain portions of Florida's campaign finance act, Fla. Stat. §106.011 et seq., as amended, Laws of Fla. Ch. 77-175 (1977). Plaintiff Let's Help Florida is a political committee organized and registered pursuant to section 106.03 of the act for the purpose of placing on the

November, 1978 general election ballot a proposal to amend Art. 10§7 of the Florida Constitution, and securing passage of the amendment. Plaintiff Paul M. Bruun is an individual desirous of contributing money in support of the efforts of Let's Help Florida. Defendants are the officials of the State of Florida who are charged with the responsibility of enforcing the campaign financing laws. Presently pending is plaintiffs' application for a preliminary injunction. A hearing was held on March 8, 1978.

Plaintiffs' primary attack[1] is upon Fla. Stat. §106.08 (1) (d), which provides:

> (1) No person or political committee shall make contributions to any candidate or political committee in this state, for any election, in excess of the

following amounts:

> (d) To any political committee in support of, or in opposition to, an issue to be voted on in a statewide election, $3,000.

It is claimed that this restriction impinges on First Amendment guarantees made applicable to the states by the Fourteenth Amendment to the United States Constitution and its enforcement should therefore be enjoined.

In passing on a request for such extraordinary relief this court is constrained to exercise its discretion in accordance with the four-pronged test enunciated by the United States Court of Appeals for the Fifth Circuit. Thus, before a preliminary injunction may be issued it must be demonstrated (1) that there exists a substantial likelihood that plaintiffs will prevail on the

merits of the action, (2) that there is a substantial threat that plaintiff will suffer irreparable injury absent the injunction, (3) that this threatened injury outweighs any potential or threatened harm to defendants, and (4) that such injunction will not disserve the public interest. Canal Authority of State of Florida v. Calloway, 489 F. 2d 567, 572 (5th Cir. 1974).

I. Likelihood of Success on the Merits

As noted above, plaintiffs' main constitutional challenge is directed at the $3,000 ceiling on contributions to political committees for the purpose of supporting or opposing an issue which may appear on the ballot in a statewide election. It is beyond question that in thus limiting contributions the statute abridges First

Amendment freedoms of political association and, perhaps to a lesser degree,[2] political expression. Although not absolute, these rights have been recognized as fundamental to our democratic system, and therefore any curtailing governmental activity is subject to strict judicial scrutiny. NAACP v. Alabama, 357 U.S. 449 (1958). Intrusions may be permitted only when the state demonstrates a legitimate and sufficiently compelling interest in the regulation, and the means utilized to promote this interest are calculated to avoid unnecessary interference with these protected rights. Buckley v. Valeo, 424 U.S. 1 (1976). Moreover, the benefits derived from the regulation must clearly "outweigh the loss of constitutionally protected rights." Elrod

v. Burns, 427 U.S. 347, 363 (1976) footnote omitted).

A. Buckley v. Valeo

Although not dealing with the identical issues involved in this case, the decision of the Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976) is instructive. In that case the Court was asked to invalidate, primarily on First Amendment grounds, limitations on campaign contributions and expenditures in federal elections.[3] The federal law generally sought to impose restrictions on the amount individuals and groups could contribute to candidates and authorized campaign committees as well as a limitation on the total amount which could be contributed during any calendar year. Additionally, expenditures during a calendar year which were made

relative to a clearly identified candidate were limited.

As to the campaign contributions the Court found that although such ceilings constituted restraints on rights of association and expression, the governmental interest in preventing corruption and the appearance of corruption brought about by large contributions to candidates was sufficient to justify the limitations. The Court specifically noted the dangers involved in large contributions being given to secure quid pro quo arrangements from current and potential office holders, Buckley, supra at 26-27, but found it unnecessary to discuss other possible government interests in the limitations.

The expenditure limitations, however, were on a different footing.

Determining that these ceilings constituted "direct and substantial restraints on the quantity of political speech," Buckley, supra at 39, the Court was unable to conclude that the interests which served to sustain the contribution limitations had equal application to expenditure limits. The Court found that the limitations were not sufficiently related to the elimination of corruptive influences for the reason that only some large independent expenditures were limited.

As if reading through different glasses, both sides cite Buckley as supportive of their respective positions. Plaintiffs claim that the ceilings contained in section 106.08(1) (d) are in fact limitations on expenditures regardless of the fact that the term

"contributions" is used, and under the Buckley rationale such constraints are impermissible. Defendants, on the other hand, argue that the ceilings in the statute seek only to regulate contributions much in the manner of the federal act and that there are no "expenditure" limitations contained in the Florida law. Contribution ceilings, they claim, have been sustained by Buckley. The court is of the opinion that whether the ceilings are characterized as regulating "contributions" or "expenditures", Buckley offers little comfort to defendants. Buckley does not stand for the proposition that contributions may always be regulated and expenditures may not. Rather, the language of the opinion indicates that under long established constitutional precepts

such regulation passes muster only where demonstrated interests of sufficient magnitude are present and the regulation relates to those interests. A close examination of the interests asserted by defendants indicates that the statute here misses the mark.

B. Compelling State Interest

The first interest alleged by defendants to be served by section 106.08(1) (d) is the avoidance of impropriety and the appearance thereof. While there can be little doubt this rationale would serve to justify limitations on contributions to candidates for political office, the court is hard pressed to understand how such an interest is served by limitations on contributions to political committees for the purpose of supporting or

opposing an issue. The potential for corruption in this setting is not readily apparent. The task becomes more difficult when one realizes that an individual who acts alone may spend unlimited sums to support or oppose an issue, but that same individual may not contribute in excess of $3,000 to an organized political committee espousing the same views in a statewide election. Indeed, there is no limit on what the committee itself may expend save that imposed indirectly by the contribution ceilings. Surely if there is a danger of corruption and undue influence connected with elections relating to issues, that danger does not disappear merely because an individual who wishes to spend large sums must do so alone. It is clear, therefore, that this

interest in avoiding corruption and undue influence, however compelling it may be, cannot sustain this regulation because the statute is not sufficiently related to elimination of these evils.

The other interest advanced by defendants as being promoted by this statute appears to relate to equalization of the "political clout" of individuals acting in a collective capacity. If such an attempt at equalization is a permissible objective, the statute is clearly counterproductive. Far from any equalization, section 106.08(1) (d) serves only to stifle effective political expression by limiting the ability of those with limited resources to combine to voice their opinions. Yet, the statute is silent as to the amount those with unlimited

resources may expend individually to promote their views. Accordingly, this rationale is likewise insufficient.

Since there presently appears to be no compelling state interest in the contribution limitations contained in section 106.08(1) (d), and that section clearly impinges on First Amendment freedoms, plaintiffs have demonstrated a substantial likelihood of prevailing on the merits of this action.

Balance of Injuries and Disserving Public Interest

Having determined that this case involves a deprivation of First Amendment rights the element of irreparable harm to plaintiffs is established. As noted by the Supreme Court, the "loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury." Elrod

v. Burns, 427 U.S. 347, 373 (1976). Conversely, the court perceives no harm to defendants in enjoining enforcement of the questioned provision of the statute. Removal of the contribution limitation as it relates to political committees supporting or opposing an issue in a statewide election does not appear to pose any significant threat to the integrity of Florida's election process. Defendants have come forth with no interest served by this statute which would be harmed by a preliminary injunction and elimination of these ceilings may aid in enhancing public awareness of the issues to be decided in the November election. Consequently, the balance of potential harm tips heavily in favor of plaintiffs' First Amendment rights.

Likewise, the public interest cannot be disserved by allowing unfettered discussion of important issues by promoting the ability of small groups to be effectively heard in the political arena. This is particularly true in a case such as this where there appears to be an absence of any interest sufficiently compelling which has the proper nexus to this statute.

Conclusion

Thus, plaintiffs have established the necessary prerequisites to a preliminary injunction. Rule 65(c), Fed. R.Civ.P., provides:

> Security. No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who

> is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States or of an officer or agency thereof.

Although this rule conditions the granting of injunctive relief upon posting of security by the movant, the amount of such security is in the discretion of the court and the court may elect to require no security. Corrigan Dispatch Co. v. Casa Guzman, S.A., ___F.2d ___ (5th Cir. 1978). Defendants have neither asked for nor shown the necessity for such bond and none will be required in this case. In view of the foregoing, it is hereby

ORDERED that defendants are enjoined from enforcing Fla. Stat. §106.08(1) (d) during the pendency of this litigation.

DONE AND ORDERED this 29th day of March, 1978.

WILLIAM STAFFORD
UNITED STATES DISTRICT JUDGE

FOOTNOTES FOLLOW

FOOTNOTES

1. In the complaint plaintiffs also challenge the constitutionality of the reporting and disclosure requirements contained in Fla. Stat. §106.07. However, in the memorandum in support of the application for preliminary injunction and at the hearing on that application plaintiffs indicated that they intend to fully comply with those requirements regardless of the outcome of this suit. This action has the effect of making this part of plaintiffs' claim moot and no discussion of its merits is necessary.

2. In Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court noted that:

> [A] limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication.
>
> A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support
>
> . . . .

> Given the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy. There is no indication, however, that the contribution limitations imposed by the Act would have any dramatic effect on the funding of campaigns and political associations. The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons. . .

id. at 20-22 (footnotes omitted). While it may be true that the quantity of communication would not increase with the size of a contribution to a political candidate in an election in which numerous issues are normally addressed, it is not altogether clear that the same result would follow in an election which

involves only a single issue which is to be accepted or rejected by the voters.

3. The lengthy and comprehensive opinion of the Supreme Court dealt with many aspects of the Federal Election Campaign Act which were under attack by the plaintiffs. However, the portions of the opinion covering only the contribution and expenditure limitations are of particular relevance to this case.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NO. 78-2497

DC Docket No. TCA 78-0750

LET'S HELP FLORIDA, a Political Committee, and Paul M. Bruun,
Plaintiffs-Appellees,

versus

Jesse M. McCRARY, Jr., as Secretary of State of Florida, et. al.,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Florida

Before THORNBERRY, FRANK M. JOHNSON, Jr., and HENDERSON, Circuit Judges

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be, and the same is hereby affirmed.

It is further ordered that Defendants-Appellants pay to Plaintiffs-Appellees the costs on appeal to be taxed by the clerk of this court.

July 11, 1980.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 78-2497
79-2091

LET'S HELP FLORIDA, a Political Committee, and Paul M. Bruun, Plaintiffs-Appellees,

v.

Jesse M. McCRARY, Jr., as Secretary of State of Florida, et al., Defendants-Appellants.

DADE VOTERS FOR A FREE CHOICE, a Political Committee, and the Florida Restaurant Association, Inc., Plaintiffs-Appellees,

v.

George FIRESTONE, Secretary of State of Florida, et al., Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Florida

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ON PETITION FOR REHEARING

(September 10, 1980)

Before THORNBERRY, FRANK M. JOHNSON, JR. and HENDERSON, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

FRANK M. JOHNSON, JR.
United States Circuit Judge

IN THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

CASE NO. 78-2497

LET'S HELP FLORIDA, a Political Committee and PAUL M. BRUUN,

Plaintiffs-Appellees,

vs.

JESSE M. McCRARY, JR., as Secretary of State, State of Florida, et.al.

Defendants-Appellants

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Defendants-Appellants in the above cause hereby take and enter an appeal to the United States Supreme Court from the judgment and opinion of this court filed July 11, 1980, rehearing denied September 10, 1980.

Respectfully submitted,

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Supreme Court, U. S.
FILED
JAN 13 1981
MICHAEL RODAK, JR., CLERK

NO. 80-970

in the Supreme Court of the United States

OCTOBER TERM, 1980

JESSE M. McCRARY, JR., as Secretary of State of Florida, MARY SINGLETON as Director of Division of Elections, State of Florida, ROBERT L. SHEVIN, as Attorney General of Florida; and WALLACE KING, Chairman of Florida Election Commission, ANNE KELLY, JAMES MATTHEWS, BENJAMIN JOHNSON, HELEN LESLIE, JAMES McKILLIPS and ROBERT HUCKSHORN, Members of the Florida Elections Commission,

Appellants,

vs.

LET'S HELP FLORIDA, a Political Committee and PAUL M. BRUUN,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

MOTION TO AFFIRM

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Cox, The Supreme Court 1979 Term-Foreward: "Freedom of Expression in the Burger Court," 94 Harv. L.Rev. 1 (1980) 4, 5, 9, 10

NO. 80-970

in the Supreme Court of the United States

OCTOBER TERM, 1980

JESSE M. McCRARY, JR., as Secretary of State of Florida, et al.,

Appellants,

vs.

LET'S HELP FLORIDA, a Political Committee and PAUL M. BRUUN,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT

MOTION TO AFFIRM

Appellees, pursuant to Rule 16 of the Rules of The Supreme Colurt of the United States, move that the Final Judgment of the United States Court of Appeals,

Fifth Circuit, be affirmed on the ground that the question is so unsubstantial as not to warrant plenary review.

STATEMENT

This is a direct appeal from the final judgment entered on July 11, 1980 by the United States Court of Appeals, for the Fifth Circuit, which affirmed the District Court's injunction against the enforcement of Section 106.08(1) Florida Statutes, as being in violation of the First Amendment of the United States Constitution. Rehearing was denied on the 10th day of September, 1980.

ARGUMENT

The decision of the United States Court of Appeals, Fifth Circuit, 421 F.2d 195 (5th Cir. 1980), is plainly correct. The Fifth Circuit held that the First Amendment prohibits restrictions on the amount of money individuals and associations may spend in political referenda, thus invalidating Section 106.08(1), Fla. Stat.[1] This holding

[1]Florida Statutes §106.08(1) provides:

106.08 CONTRIBUTIONS: LIMITATIONS ON. –
(1) NO PERSON OR POLITICAL COMMITTEE SHALL MAKE CONTRIBUTIONS TO ANY CONDIDATE OR POLITICAL COMMITTEE IN THIS STATE, FOR ANY ELECTION, IN EXCESS OF THE FOLLOWING AMOUNTS:
(a) TO A CANDIDATE FOR COUNTYWIDE OFFICE OR TO A CANDIDATE IN ANY ELECTION CONDUCTED ON LESS THAN A COUNTYWIDE BASIS, $1,000.
(b) TO A CANDIDATE FOR LEGISLATIVE OR MULTICOUNTY OFFICE, $1,000.
(c) TO A CANDIDATE FOR STATEWIDE OFFICE, $3,000.
(d) TO ANY POLITICAL COMMITTEE IN SUPPORT OF, OR IN OPPOSITION TO, AN ISSUE TO BE VOTED ON IN A STATEWIDE ELECTION, $3,000.
(e) TO ANY POLITICAL COMMITTEE IN SUPPORT OF, OR IN OPPOSITION TO, AN ISSUE TO BE VOTED ON IN A COUNTYWIDE, DISTRICTWIDE, OR LESS THAN COUNTYWIDE ELECTION, $1,000.
(f) TO A POLITICAL COMMITTEE SUPPORTING OR OPPOSING ONE OR MORE CANDIDATES, $1,000.
(g) TO A CANDIDATE FOR COUNTY COURT JUDGE OR CIRCUIT JUDGE, $1,000.
(h) TO A CANDIDATE FOR RETENTION AS A JUDGE OF A DISTRICT COURT OF APPEAL, $2,000.
(i) TO A CANDIDATE FOR RETENTION AS A JUSTICE OF THE SUPREME COURT, $3,000.

is the ineluctable consequence of the decisions in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) and *First National Bank v. Bellotti*, 435 U.S. 765, 98 S.Ct.1407, 55 L.Ed.2d 707 (1978).[2] The present issue of the First Amendment protection of expenditures in a political referendum, as distinguished from expenditures in a political campaign to elect an office holder, was not raised in *Buckley v. Valeo, supra*, because *Buckley* involved federal election laws. Since no national referenda occur, this Court, in *Buckley v. Valeo, supra*, could not make a determination as to the validity of restrictions on campaign expenditures in the context of a state referendum election. However, the court's explicit reasoning in *Buckley v. Valeo, supra*, provides clear support for the Fifth Circuit's decision herein.

The federal election law examined in *Buckley v. Valeo, supra*, was drafted in order to allay the public's fear of the affect that campaign contributions have on elected officials:

> Senator Russell Long once observed: 'When you are talking in terms of large campaign contributions . . . the distinction between a campaign contribution and a bribe is almost a hair's line difference.'
> Cox, The Supreme Court 1979 Term-Foreward: "Freedom of Expression in the Burger Court", 94 Harv. L. Rev. 1 at 56 (1980), citing, Hearings on S.3496, Amendment No. 732 S. 2006, S.

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[2]This Court's imprimatur on the issue in this case would be established by summary affirmance. *Hicks v. Miranda*, 422 U.S. 332, 95 S.Ct. 2281, 45 LE.2d 223 (1975).

2965 and S. 3014 before Senate Comm. on Finance; 89th Congress 2d. Sess. 78 (1966).[3]

In order to prevent campaign contributions from affecting the actions of elected officials, the federal election law required detailed financial disclosure and placed limits on the amount of *contributions* which a candidate was able to accept. The federal election law further placed a ceiling on personal, family and aggregate *expenditures.*

In *Buckley v. Valeo, supra,* the court sustained the ceilings on contributions to candidates, but declared void the ceilings on expenditures. This court held that the First Amendment protects political expenditures as fully as speech itself:

> [T]his Court has never suggested that the dependence of a communication on the expenditure of money operates itself to introduce a non-speech element or to reduce the exacting scrutiny required by the First Amendment.
>
> • • •
>
> A restriction on the amount of money a person or group can spend on a political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration and the size of the audience reached.

Id. 424 U.S. 1, 16-19 (1976); *See also,* 94 Harv.L. Rev. 1 at 59-60.

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[3]*See also* 94 Harv. L. Rev. 1 at n. 254.

Although the danger of corruption through money is obviously greater in the context of an election than of a referendum,[4] this court held in *Buckley v. Valeo, supra*, that the First Amendment prohibits restrictions on the right of an individual to spend unlimited sums to advocate the election of a candidate of his choice, the only caveat being that his expenditures must not be "coordinated" with those of the candidate.

Since expenditures for a referendum election can never pose the danger of corrupting a candidate, nor can expenditures be coordinated with those of a candidate, the reasoning of *Buckley v. Valeo, supra*, compels the

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[4]Justice Powell, in *First National Bank v. Bellotti, supra*, commented in his footnote that the danger of corruption is manifestly greater in an election than in a referendum:

> The overriding concern behind the enactment of statutes such as the Federal Corrupt Practices Act was the problem of corruption of elected representatives through creation of political debts. The importance of the government interest in preventing this occurrence has never been doubted. The case before us presents no comparable problem, and our consideration of a corporation's right to speak on issues of general public interest implies no comparable right in the quite different context of participation in a political campaign for election to public office. Congress might well be able to demonstrate the existence of a danger of real or apparent corruption in independent expenditures of corporation to influence *candidate* elections. (emphasis added.)

435 U.S. at 788 n. 26 (citations omitted).

logical conclusion that the First Amendment prohibits any limitation on expenditures in the context of a referendum election.

A restriction on expenditures by people would not only offend First Amendment guarantees, but would also create further constitutional and practical dilemas. Assuming arguendo that expenditures could be restricted, would the restrictions also limit the valuable endorsement made by newspaper editorials, or could we limit only the expenditures of non-press persons?

In the context of a referendum it is true that there may exist the opportunity for the rich to speak louder or more effectively than the poor. The First Amendment, however, prohibits equalizing the rich and poor in their ability to express themselves. This court stated in *Buckley v. Valeo, supra,:*

> . . . But the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the first amendment, which was designed "to secure 'the widest possible dissemination of information from diverse and antagonistic sources,' " and " 'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' "

Id. at 424 U.S. 48-49 (1976) (cites omitted).

The Supreme Court of California in *Citizens Against Rent Control v. City of Berkeley,* 27 Cal.2d 819, 614 P.2d 742, 167 Cal. Rptr. 84 (1980), flagrantly defied the

above edict from the United States Supreme Court in upholding a legislative enactment similar to the one sub-judice, based upon the explicit finding that the equalizing of elector voices regardless of wealth serves a compelling state interest, saying:

> There can be no doubt that government regulation designed to preserve the integrity of the initiative and referendum promotes a goal of the highest priority. As will appear, the Berkeley ordinance serves this compelling interest in a manner that does not frustrate another important aim of the electoral process: i.e. that all be given an opportunity to be heard so as to assure the wildest dissemination of opinions on important public questions.

167 Cal Rptr. at 87.[5]

The California court further held:

> We conclude that the Berkeley ordinance does not interfere with effective advocacy or dissemination of information by all sides to a ballot measure controversy, but instead is designed to preserve initiative and referendum

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[5]*Citizens Against Rent Control v. City of Berkeley*, 167 Cal. Rptr. 84 (1980) quotes the purpose of the Ordinance:

> Thus the Berkeley Election Reform Act begins with the declaration that "Local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth. . . .

Id. at n.5.

> elections for the salutary purpose for which they were created, and tends to prevent the corruption of the political process that otherwise results.

167 Cal. Rptr. at 90.

If the decision in *Citizens Against Rent Control v. City of Berkeley*, 167 Cal. Rptr. 84 (1980) is ultimately reviewed by this Court, it should be overturned:

> Restrictions on spending in the context of a referendum election have been addressed by the Supreme Court only in the case of *First National Bank v. Belotti, supra.* In that case, this court determined that a corporation could not be prohibited by a state from spending money in a referendum election. The issue was not raised as to whether there could be limits on the amount of money corporations or other people could spend.
>
> The decision in *Belotti, supra*, logically extends from *Buckley v. Valeo, supra*, wherein this court held that independent expenditures, however, large, are pure speech and present insufficient danger of undue influence upon a candidate's conduct in office to justify restrictions unless they are "controlled by or coordinated with" the candidate, in which case they would be treated as contributions. 94 Harv.L.Rev. *supra* at 68. In *Belotti, supra*, this court determined that corporate expenditures in a referendum election are also speech, and speech cannot be curtailed because of the character of the "speaker", whether a corporation or labor union. Id. Archibald Cox, in a Harvard Law Review article, synthesizes *Buckley, supra* and *Belotti, supra:*

> According to both opinions, the danger that individual ideas and voices will be drowned out by massive advertising campaigns is not sufficient to justify prohibiting vast expenditures for political advertising by individuals or corporations. 94 Harv.L.Rev., *supra* at 68.

We respectfully submit, therefore, that the appellants present no substantial question for the decision of this court, and the judgment and decree of United States Court of Appeals, Fifth Circuit, should be affirmed.

CONCLUSION

Based upon the foregoing argument, Appellees respectfully request that this court summarily affirm the decision of the United States Court of Appeals, Fifth Circuit.

Respectfully submitted,

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Attorneys for Appellees
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358-8611

By:/s/ _____
TOBIAS SIMON

DATED ___ day of January, 1981.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Motion to Affirm were furnished by United States Mail to the Honorable JIM SMITH, Attorney General, State of Florida, The Capitol, Tallahassee, Florida; and to ANTHONY C. MUSTO, Assistant Attorney General, State of Florida, Chief Counsel, Miami Division, Department of Legal Affairs, Ruth Bryan Owen Rohde Building, Florida Regional Service Center, 401 N.W. Second Avenue, Miami, Florida this day of January, 1981. I further certify that all parties required to be served have been served.

RESPECTFULLY SUBMITTED,

SIMON, SCHINDLER & TRIPP, P.A.
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Miami, Florida 33130
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By: /s/_____
TOBIAS SIMON